



THE CITY OF AUGUSTA

DAVID M. ROLLINS, MAYOR

CITY COUNCIL

JEFFREY M. BILODEAU
ANNA D. BLODGETT
LINDA J. CONTI
DAREK M. GRANT

DALE McCORMICK
CECIL E. MUNSON
PATRICK E. PARADIS

WILLIAM R. BRIDGEO
CITY MANAGER

INFORMATIONAL MEETING AGENDA

Thursday, May 14, 2015

CITY HALL (COUNCIL CHAMBERS)

6:30 p.m.

A. Items for discussion submitted by the City Council and/or the City Manager:

1. Emergency Medical Services Week, May 17th through May 24th – Fire Chief Roger Audette
2. Home Resilience Exhibit at The Colonial Theater – Keith Luke
3. Maine Instrument Flight Tax Increment Financing District – Keith Luke
4. Childhood hunger – Councilor Grant
5. City of Augusta minimum wage ordinance -- Councilor Blodgett

B. Persons wishing to address the City Council who have submitted a formal request in accordance with Section 2-61 of the Code of Ordinances:

C. Open comment period for any persons wishing to address the City Council.

City of Augusta, Maine
DEPARTMENT OF DEVELOPMENT SERVICES

AUGUSTA STATE AIRPORT
CODE ENFORCEMENT
ECONOMIC DEVELOPMENT



ENGINEERING
FACILITIES & SYSTEMS
PLANNING

MEMO

To: Bill Bridgeo, Mayor Rollins, Augusta City Councilors
From: Keith Luke
CC: Matt Nazar, Ralph St. Pierre
Date: May 11, 2015

Request for Funding – Home/Resilience Project

The producers of the Home/Resilience Project are requesting \$2,800 – through the Augusta Downtown Alliance – to help underwrite the installation of their multimedia exhibit at the Colonial Theater.

Home/Resilience is an interactive social documentary installation and story of and tribute to the last two 90-year old residents of the recently closed 144-year old St. Mark's Home for Women in Augusta. The site-specific work will be created in the historic Augusta Colonial Theater in downtown Augusta, which closed in 1969, and is currently undergoing an exciting revitalization. Through the stories and voices of Ruth and Nona, Home/Resilience raises questions and inspires conversations about wisdom and aging – offering insights about the social and physical structures that help shape our notions of 'home.' Woven with fragments of audio/visual histories and community narratives, Home/Resilience moves beyond a traditional documentary film, photography show, or radio story. As part of the installation, A HOME FOR WOMEN a short (10min) documentary film by Kate Kaminski, Betsy Carson, Caroline Losneck will be screened (on a set schedule) on the "front porch" - a micro-cinema adjacent to the St. Mark's "set" with audiences as 'welcomed visitors' to Nona/Ruth's home. Home/Resilience will open on FRIDAY JUNE 12th at the Augusta Colonial Theater and will be up for a month. The lineup includes a film screening, artist/subject/filmmaker Q&As, and outreach into Augusta community assisted living facilities.

Woven with fragments of audio/visual histories and community narratives, Home/Resilience moves beyond a traditional documentary film, photography show, or radio story.

The website for Home/Resilience has info about the installation and the film trailer on it:
<http://www.homeresilience.org/>



Post Office Box 2066
Augusta, Maine 04338
Message: 207-458-8757
www.augustadowntownalliance.org
Office: 295 Water St., Suite #102

**Augusta Downtown Alliance
Board of Directors**

Melanie Baillargeon, President
David Hopkins, Vice-President
Lorie Mastemaker, Treasurer
Heather Pouliot, Secretary
Tyler Brown
Linda Lacroix
Jared Mills
Julie Moser
Daniel Nichols
Tobias Parkhurst
Jesse Patkus
Elisa Paylor
Patrick Quigg
Laura Soule
Colleen Tyler

April 22, 2015

Augusta City Council
c/o David Rollins, Mayor
City Center
12 Cony Street
Augusta, ME 04330

Dear Mayor Rollins and City Councilors:

The Augusta Downtown Alliance supports the efforts to bring the Home/Resilience Installation and its accompanying Public Engagement Activities to the Augusta Colonial Theater this summer, and urges the Council to provide financial support to assist in this endeavor.

This installation, and the additional activities that support it, would assist in transforming the public's perception of the Colonial Theater from a derelict building to a potential arts and culture anchor in the city's downtown district. It would also bring attention to a powerful demographic reality currently shaping Maine, the nation, and the City of Augusta... our aging population and the burgeoning number of older citizens.

Additionally, visitors to this installation would bring business traffic to the downtown district, improving the situation for our restaurants and retail shops, and introducing the downtown to new patrons.

We urge the Council to provide financial support from Downtown TIF funds in the amount of \$ 2800.00 to bolster the public outreach and engagement components of this project.

Melanie Baillargeon
President, Board of Directors

Stephen Pecukonis
Executive Director

AUGUSTA COLONIAL THEATER

139 Water Street
Augusta, Maine 04330

April 23, 2015

Members of the Augusta City Council

RE: Support for the Arts

Dear Member of the Augusta City Council:

As you know, I believe strongly that the next logical step for downtown Augusta is to develop the downtown into the cultural center of the City of Augusta. My goal is to make the Augusta Colonial Theater a hub for cultural experiences in the greater Augusta area. While the Theater re-opening of the Theater is two to three years away, we must begin developing cultural experiences as soon as possible. Every cultural event will lead downtown Augusta toward that end goal.

That is why I am writing to express my support for the *Home/Resilience* experiential documentary arts project by Caroline Losneck, Kelly Rioux, and Chris Byron. *Home/Resilience* will be the first arts event at the Augusta Colonial Theater when the project opens in June 2015. It is an exciting arts project that has community engagement at its center, and has great potential to draw audiences from Augusta and beyond to our downtown during the summer. With funding from the City of Augusta, the artists will be able to greatly expand and strengthen the public engagement aspects of the *Home/Resilience* project into the Augusta community, which is something I fully support.

In January, the artists received a competitive SPACE Gallery/Kindling Fund grant, which they are using to cover the costs of the installation, travel, and materials for *Home/Resilience*. *Home/Resilience* will spark dialogues about aging, issues of community - particularly interesting for Augusta with the renovation of the Inn at City Hall and Cony Flatiron restoration. With additional funding Caroline, Kelly and Chris will be able to screen their short documentary film, *A Home For Women* in additional Augusta-area venues such as assisted living facilities. They have already partnered with the Camden International Film Festival's Points North "Aging in Maine" Engagement Summit to host a film screening in late June/early July. The "Aging in Maine" program features a statewide screening tour -developed collaboratively with nonprofit partners- that highlights award-winning films focused on the issue of aging and provides a catalyst for partners to engage local communities in dialogue.

Funding from the city will also allow the artists to conduct Oral History/Storytelling and Mixed Media Portrait Workshops for residents in the Inn at City Hall.

It is my belief that the *Home/Resilience* interactive art installation, community engagement work,

and efforts of the artists is helping to show off the role of the arts in not only the Augusta Colonial Theater, but in downtown Augusta as well. Arts projects like *Home/Resilience* will help downtown Augusta achieve its potential as a place for all people to live, work, visit, and come together.

I am excited to be partnered with these enthusiastic and engaged artists, and I strongly encourage the city of Augusta to support their efforts in this wonderful project. Thank you for your support.

Sincerely,

Richard Parkhurst
President, Augusta Colonial Theater
(207) 557-3930

City of Augusta, Maine
DEPARTMENT OF DEVELOPMENT SERVICES

AUGUSTA STATE AIRPORT
CODE ENFORCEMENT
ECONOMIC DEVELOPMENT



ENGINEERING
FACILITIES & SYSTEMS
PLANNING

MEMO

To: Bill Bridgeo, Mayor Rollins, Augusta City Councilors
From: Keith Luke
CC: Matt Nazar, Ralph St. Pierre
Date: May 11, 2015

Maine Instrument Flight Tax Increment Financing District

Bill Perry from Maine Instrument Flight is proposing construction of a new 12,000 square foot hangar facility at the Augusta State Airport that will be owned by the company, located on property leased from the State of Maine. The new hangar facility will enable the company to accommodate growth – especially in the new pilot training program that is being offered in conjunction with the University of Maine at Augusta.

The facility will be constructed by Peachey Builders of Augusta – the City of Augusta Assessor's Office is estimating a new, taxable value on the property of at least \$516,000.

The TIF Committee approved a tax increment financing plan that will provide a 50% rebate to the business owner for years 1-18 (equal to the length of Maine Instrument Flight's remaining lease on state property). The remainder of the revenue will be directed to the City of Augusta's Downtown Omnibus TIF for years 1-14, and the City's general fund for years 15-20.

**MAINE INSTRUMENT FLIGHT TAX INCREMENT FINANCING DISTRICT
TAX SHIFT CALCULATIONS
*** DRAFT *****

TIF YR.	TAX YEAR			EPS Education Shift	Revenue Sharing Shift	County Tax Shift	Total Tax Shift
Base	2014	-	2015				
1	2015	-	2016	\$ -	\$ -	\$ -	\$ -
2	2016	-	2017	\$ -	\$ -	\$ -	\$ -
3	2017	-	2018	\$4,029	\$493	\$416	\$4,939
4	2018	-	2019	\$4,029	\$493	\$420	\$4,943
5	2019	-	2020	\$4,029	\$493	\$424	\$4,947
6	2020	-	2021	\$4,029	\$493	\$428	\$4,951
7	2021	-	2022	\$4,029	\$493	\$432	\$4,955
8	2022	-	2023	\$4,029	\$493	\$436	\$4,959
9	2023	-	2024	\$4,029	\$493	\$441	\$4,963
10	2024	-	2025	\$4,029	\$493	\$445	\$4,968
11	2025	-	2026	\$4,029	\$493	\$449	\$4,972
12	2026	-	2027	\$4,029	\$493	\$453	\$4,976
13	2027	-	2028	\$4,029	\$493	\$458	\$4,980
14	2028	-	2029	\$4,029	\$493	\$462	\$4,985
15	2029	-	2030	\$4,029	\$493	\$466	\$4,989
16	2030	-	2031	\$4,029	\$493	\$471	\$4,994
17	2031	-	2032	\$2,015	\$493	\$475	\$2,983
18	2032	-	2033	\$2,015	\$493	\$480	\$2,988
19	2033	-	2034	\$2,015	\$493	\$485	\$2,993
20	2034	-	2035	\$2,015	\$493	\$489	\$2,997
Cumulative				\$64,472	\$8,878	\$8,132	\$81,481
Avg. Annual				\$3,582	\$493	\$452	\$4,527

ASSUMPTIONS

Mil rate is \$18.67 for district duration.

Annual real property appreciation = 0.00%

MAINE INSTRUMENT FLIGHT TAX INCREMENT FINANCING DISTRICT
REVENUE SUMMARY
*** DRAFT ***


TIF YR.	TAX YEAR		DISTRICT INCREASED ASSESSED VALUE			DISTRICT REVENUES		CAPTURE		AUGUSTA ALLOCATION		MAINE INSTRUMENT FLIGHT ALLOCATION		GENERAL FUND	
	2014	2015	Real	Personal	Total	Projected Mil Rate	Total Tax Revenue Generated Within District	% of Increased Assessed Value Captured	TIF Revenues	% of TIF Revenues	Amount of TIF Revenues	% of TIF Revenues	Amount of TIF Revenues	% of Revenue from District not Captured	Amount of Revenue from District not Captured
Base	2014	2015	\$516,600	\$0	\$516,600	\$18.67	\$9,645	100%	\$9,645	50%	\$4,822	50%	\$4,822	0%	\$0
1	2015	2016	\$516,600	\$0	\$516,600	\$18.67	\$9,645	100%	\$9,645	50%	\$4,822	50%	\$4,822	0%	\$0
2	2016	2017	\$516,600	\$0	\$516,600	\$18.67	\$9,645	100%	\$9,645	50%	\$4,822	50%	\$4,822	0%	\$0
3	2017	2018	\$516,600	\$0	\$516,600	\$18.67	\$9,645	100%	\$9,645	50%	\$4,822	50%	\$4,822	0%	\$0
4	2018	2019	\$516,600	\$0	\$516,600	\$18.67	\$9,645	100%	\$9,645	50%	\$4,822	50%	\$4,822	0%	\$0
5	2019	2020	\$516,600	\$0	\$516,600	\$18.67	\$9,645	100%	\$9,645	50%	\$4,822	50%	\$4,822	0%	\$0
6	2020	2021	\$516,600	\$0	\$516,600	\$18.67	\$9,645	100%	\$9,645	50%	\$4,822	50%	\$4,822	0%	\$0
7	2021	2022	\$516,600	\$0	\$516,600	\$18.67	\$9,645	100%	\$9,645	50%	\$4,822	50%	\$4,822	0%	\$0
8	2022	2023	\$516,600	\$0	\$516,600	\$18.67	\$9,645	100%	\$9,645	50%	\$4,822	50%	\$4,822	0%	\$0
9	2023	2024	\$516,600	\$0	\$516,600	\$18.67	\$9,645	100%	\$9,645	50%	\$4,822	50%	\$4,822	0%	\$0
10	2024	2025	\$516,600	\$0	\$516,600	\$18.67	\$9,645	100%	\$9,645	50%	\$4,822	50%	\$4,822	0%	\$0
11	2025	2026	\$516,600	\$0	\$516,600	\$18.67	\$9,645	100%	\$9,645	50%	\$4,822	50%	\$4,822	0%	\$0
12	2026	2027	\$516,600	\$0	\$516,600	\$18.67	\$9,645	100%	\$9,645	50%	\$4,822	50%	\$4,822	0%	\$0
13	2027	2028	\$516,600	\$0	\$516,600	\$18.67	\$9,645	100%	\$9,645	50%	\$4,822	50%	\$4,822	0%	\$0
14	2028	2029	\$516,600	\$0	\$516,600	\$18.67	\$9,645	100%	\$9,645	50%	\$4,822	50%	\$4,822	0%	\$0
15	2029	2030	\$516,600	\$0	\$516,600	\$18.67	\$9,645	50%	\$4,822	0%	\$0	100%	\$4,822	50%	\$4,822
16	2030	2031	\$516,600	\$0	\$516,600	\$18.67	\$9,645	50%	\$4,822	0%	\$0	100%	\$4,822	50%	\$4,822
17	2031	2032	\$516,600	\$0	\$516,600	\$18.67	\$9,645	50%	\$4,822	0%	\$0	100%	\$4,822	50%	\$4,822
18	2032	2033	\$516,600	\$0	\$516,600	\$18.67	\$9,645	50%	\$4,822	0%	\$0	100%	\$4,822	50%	\$4,822
			Totals						\$154,319		\$67,514		\$86,804		\$19,290
			Annual Avg.						\$8,573		\$3,751		\$4,822		\$1,072

ASSUMPTIONS

Mil rate is \$18.67 for district duration.
Annual real property appreciation = 0.00%

Drawing name: H:\306401\dwg\HANGAR-FOOTPRINT120x100-hangar1-IMAGE.dwg Feb 21, 2013 -- 11:14am



 <p>Augusta <i>your Maine Connection!</i> STATE AIRPORT</p> <p>75 AIRPORT ROAD AUGUSTA, ME 04330</p>					PROPOSED HANGAR	EXHIBIT A
CHKD. BY JG	DR. BY JLC	DES. BY EM	DATE: FEB, 2012	SCALE: AS SHOWN	BUILDING FOOTPRINT	

Maine Instrument Flight, Inc.
Construction Budget Cost Breakdown
New 12000 SF Storage Hangar

1/21/2015

Construction Classification	2014 Amount	Total
General Conditions		
Supervision	\$ 14,000	
Crane and Manlifts	\$ 27,635	
SkyWebb Safety Netting	\$ 6,958	
Temp Facilities/Utilities	\$ 1,941	
Cleaning and Dumpster Fees	\$ 2,500	
Total General Conditions		\$ 53,034
Earthwork		
Earthwork	\$ 37,550	
Pipe Bollards	\$ 1,724	
Total Earthwork		\$ 39,274
Concrete		
Foundations	\$ 43,260	
Floor Slab Tie Rods & Reinforcing Steel	\$ 18,566	
Floor Slab Concrete and Finish	\$ 44,908	
Floor Trench Drain	\$ 1,706	
Grout for Leveling Plates	\$ 435	
Concrete Testing	\$ 1,200	
Total Concrete		\$ 110,075
Structural & Misc. Steel		
Steel Anchor Bolts	\$ 4,064	
Misc. Steel Angle for Nosings etc.	\$ 2,212	
VP Building Package & Erection	\$ 274,786	
VP Pass Doors	\$ 2,217	
Wilson Bifold Door Package	\$ 50,030	
Total Steel		\$ 333,309
Thermal & Moisture Protection		
Vapor Barrier	\$ 1,385	
Perimeter Rigid Insulation	\$ 3,192	
Rigid Insulation Under Floor	\$ 16,896	
Misc. Sealants & Caulking	\$ 1,561	
Total Thermal & Moisture Protection		\$ 23,034
Plumbing		
Floor Drain Piping	\$ 6,246	
Total Plumbing		\$ 6,246
Electrical		
Electrical Service and Light Fixtures	\$ 27,490	
Total Electrical		\$ 27,490
Sub Total		\$ 592,462
Contractors Overhead 8%		\$ 47,397
Contractors Profit 5% in 2013 and 3% in 2014		\$ 19,196
Total W/Contractors Overhead & Profit		\$ 659,055
Cost/SF		\$ 54.92
Options		
1. Change Roof Insulation to 6" and Add 4" Wall Insul.	Add \$	17,988
2. Architect/Engineering Fees (Foundations/Civil/Permits)	Add \$	8,508
3. Demolish Existing Bldg Including Foundations	Add \$	39,690
4. Bring Water & Sewer Into Bldg.	Add \$	13,608
5. CMU Block Fire Wall (West Side)	Add \$	47,205
6. Add 14 by 14 Overhead Door	Add \$	4,272
7. Add Heating System to Bldg Including Power Wiring	Add \$	71,525
8. Building Ventilation	Add \$	17,865
9. Construct Rated Mechanical Room for Boiler	Add \$	6,023
10. Increase Door Ht From 16 ft. to 20 ft. Clear (24'-6" High)	Add \$	14,019
Total Options		\$ 240,703
Grand Total		\$ 899,758

Prepared By



What the City's 2007 Comprehensive Plan has to say about childhood hunger, "as was highlighted in the recent Kennebec Journal series on hunger, it is important that children have a nutritional breakfast in order to do well in school. The Augusta public schools offer breakfast to all of their school children. About half are eligible to receive it for free; the other half must pay a nominal fee of 75 cents. Even so, only about a quarter of elementary students take advantage of the opportunity. School staff is working to raise participation in the breakfast program, and we encourage these efforts."

School Name	School Year	Number Eligible for Free/ Reduced Lunch	Total Enrollment	Percent Eligible for Free/ Reduced Lunch
Cony	2014-15	558	1,011	55.2%
Farrington	2014-15	234	352	66.5%
Hussey	2014-15	160	284	56.3%
Lincoln	2014-15	202	281	71.9%
Gilbert	2014-15	200	323	61.9%
TOTAL	2014-15	1354	2,251	60.2%

(Source: Maine Department of Education)

PROPOSAL TO CREATE:

Augusta Childhood Hunger Commission

Vision Statement: to raise awareness about childhood hunger and the impact of food insecurity and the connection between good nutrition and better performance in school; to support and increase participation in child nutrition programs; and to create greater partnerships with local farms, food distributors, nonprofits, and local, state, federal and private programs.

Membership: the membership of the Commission shall consist of eleven (11) persons appointed by Mayor with the advice and consent of the City Council:

- Two (2) City Councilors;
- Two (2) School Board Members;
- Three (3) members from local nonprofit organizations that administer anti-hunger programs;
- One (1) member from the Augusta business community;
- One (1) resident of Augusta;
- One (1) student from the Augusta School System; and
- One (1) member from the Augusta Legislative Delegation.

Four (4) members of the Commission shall be initially appointed to terms of three (3) years; four (4) shall be appointed to terms of two (2) years; and three (3) shall be appointed to a term of one (1) year. All appointments thereafter shall be for terms of three (3) years, except to fill a vacancy created by an unexpired term, in which case the appointment shall be for the remainder of the term. All vacancies shall be filled by appointment of the City Council within sixty (60) days. Each member of the Commission shall serve without compensation. Members may serve multiple terms. The Mayor shall appoint a member to serve as the Commission Chair, with the advice and consent of the Council.

The City's Director of Health and Welfare and the School Department's Nutrition Director, or their designee, shall serve as staff support and ex officio non-voting members of the Commission.

Meeting: the Commission shall meet not fewer than four (4) times in any twelve-month period. All meetings of the Commission must be publicly announced, be open to the public, and have a previously available agenda. Public notice must be provided prior to any special meetings.

Report: the Commission, through its Chair, shall submit to the Mayor and Council, with a copy to the City Manager, and the School Board and Superintendent, a written report of its activity, together with any recommendations it believes appropriate, not less than once in every six (6) months after its establishment. Minority reports may be submitted together with the Commission's reports.

ARTICLE I.

PURPOSES

WHEREAS, the minimum wage for state or federal has not been increased since 2009; and

WHEREAS the current minimum wage in Maine is \$7.50 per hour; and

WHEREAS the minimum wage in Maine in 1966 was \$1.25 per hour and adjusted for inflation over nearly 5 decades, that same wage would equal \$9.15 per hour - \$1.65 more than it is currently, and

WHEREAS, a report last year by the Maine Women's Policy Center found that 85% of Maine's workers who would be impacted by raising the minimum wage are over 20 years of age; and

WHEREAS, according to a report by the Maine Center for Economic Policy, 23% of workers in the Second District – or 60,000 people and for the whole state that number is over 100,000 Maine people would benefit from a raise in the minimum wage to \$10.10 per hour as proposed by President Obama; and

WHEREAS, 62% of Maine women who would benefit from an increase in the minimum wage have no partner supplementing their income; and

WHEREAS, Bangor is home to 6% of Maine's statewide workforce or about 35,000 workers and extrapolating from the statewide analysis at least several thousand workers in Bangor would benefit from an increase in the minimum wage.

MINIMUM WAGE RATE

Effective January 1, 2016, minimum wage for all employees would be \$8.25 per hour;

Effective January 1, 2017, minimum wage for all employees would be \$9.00 per hour;

Effective January 1, 2018, minimum wage for all employees would be \$9.75 an hour;

Effective January 1, 2019, minimum wage will increase on January 1st of each year to reflect the increase in the Consumer Price Index (CPI) for the immediately preceding 12 months.

NOW THEREFORE, the City Council of the City of Bangor, Maine hereby establishes the following minimum wage ordinance applicable to all Employers and Employees within the City of Bangor.

ARTICLE II

Sec. 33.2. Definitions

Unless the context otherwise indicates, the following words shall have the following meanings.

City: City of Bangor

City Limits: the physical boundaries of the City

Employer: Any individual, group of individuals, partnership, association, corporation, business trust, or any other entity or group of persons or entities who employs or exercises control over the wages, hours or working conditions of more than four Employees; "Employer" shall include but not be limited to the City of Bangor.

Employee: Any person 18 years of age or older who performs work for an Employer for monetary compensation within the municipal limits of the City. Employee shall include persons who perform work for an employer on a full-time, part-time, seasonal or temporary basis. "Employee" shall not include any person who is excluded from the definition of Employee under 26 M.R.S. §663 of Chapter 7, Employment Practices and working for an Employer for academic credit from an accredited school, college or university for the purpose of this ordinance, Tipped Employees are not included in this definition of Employee.

Minimum wage: The minimum hourly rate of monetary compensation that an Employer may legally pay an Employee, including, but not limited to, Tipped Employees, for work within the City.

Tip: A sum presented by a customer as a gift or gratuity in recognition of some service performed by the Employee.

Tipped Employee: Any Employee 18 years of age or older engaged in an occupation in which he or she customarily and regularly receives tips from customers.

Sec. 33.5 – 33-6 Reserved.

ARTICLE III.

Section 33.7. Minimum Wage.

- (a) Minimum wage payment required: Except as provided herein, Employers shall pay all Employees no less than the minimum wage for each hour worked within the City Limits.

(b) Minimum wage rate.

- (i) On January 1, 2016, the minimum wage for all Employees shall be established as \$8.25 per hour;
- (ii) On January 1, 2017, the regular minimum wage for all Employees shall be raised to \$9.00 per hour;
- (iii) On January 1st, 2018, the regular minimum wage for all Employees, shall be raised to \$9.75 per hour;
- (iv) On every first day of January following January 1, 2018, and every first day of January thereafter, the minimum wage for all Employees, shall increase at the percentage set by the Consumer Price Index for All Urban Consumers (CPI-U) of the previous most up-to-date twelve (12) months as reported by the Bureau of Labor Statistics. The sum of the most recent twelve months for which there is a calculated CPI-U reported by the Bureau of Labor Statistics will be the rate by which to define the increase in the minimum wage. For example, if the Bureau of labor Statistics reports that every month from January, 2019 to December 2018 experienced a 1 percent price increase, then the increase in the minimum wage would be 1.2 percent. If the CPI-U increases by less than 0.0005 percent or if it decreases, the minimum wage for all Employees will not change.

ARTICLE IV.

Sec. 33.8 Notice, Posting and Records.

- (a) **Notice to Employees.** Every employer shall post in a conspicuous place at any workplace or job site where any Employee works, a notice to be provided by the City informing Employees of the City's current minimum wage rates, as well as a copy of this ordinance.
- (b) **Records.** Employers shall maintain payroll records showing hours worked daily by and the wages paid to all Employees. Employers shall retain such payroll records pertaining to all Employees for a period of at least three (3) years after an Employee has left employment.
- (c) The City shall have access to any and all Employer payroll records subject to this ordinance during business hours to investigate whether or not an Employer has violated any of the provisions of this chapter.

Sec. 33.9. Enforcement.

- (a) Any Employee receiving less than the minimum wage he or she is required to receive under this ordinance may file a written complaint with the city Manager's office.
- (b) The City Manager or his or her designee may take appropriate steps to enforce this chapter; and may investigate and issue a response to the complaint within fifteen (15) work day following the receipt of a complaint. The City Manager's or is or her designee's response to the complaint shall be final.
- (c) If the City Manager finds that a violation of this chapter has occurred, he or she may order any appropriate relief including, but not limited to, the payment of any back wages withheld and/or the payment of \$100.00 as a penalty for each day that a violation of this chapter has occurred. A violation of this Ordinance may also be considered a civil violation subject to the general penalty provisions of section 1-15 of this Code.
- (d) In the alternative, any Employee may bring an action in a Court of competent jurisdiction against the Employer for any and all violations of this chapter, including, but not limited to, wages and expenses owed under this chapter.

ARTICLE VI.

Sec. 33.10. Relationship To Other Requirements.

This ordinance provides for payment of minimum wage rates within the City and shall not be construed to preempt or otherwise limit or affect the applicability of any other law, regulation, requirement or policy that provides for payment of higher wages and/or benefits. Nothing contained in this ordinance prohibits an employer from paying more than the minimum wage rates established herein.

ARTICLE VII.

Sec. 33.11. Severability Clause.

If any section, paragraph, sentence, word or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court, such decision shall not affect the validity of the remaining provisions of this ordinance.

ARTICLE VIII.

Sec. 33.12. Effective Date.

This ordinance shall take effect on July 1, 2015.

CITY OF PORTLAND

MEMORANDUM

TO: Chair Mavodones and Members of the Finance Committee

CC: Mayor Brennan and Members of the Portland City Council

FROM: Danielle P. West-Chuhta, Corporation Counsel

DATE: November 13, 2014

RE: **Proposed Minimum Wage Ordinance Research re: home rule and constitutional challenges**

THE VALIDITY OF A MINIMUM WAGE ORDINANCE FOR PORTLAND

Recently, a number of municipalities across the nation have enacted local ordinances that provide minimum or living wages greater than that provided by state or federal law. This movement is in response to the lack of political will in the federal and state governments to pass laws that provide minimum wages in step with the steadily increasing costs of living. For example, as recently as 2013, Maine's legislature passed a bill that would have raised the state minimum wage and tied it to the consumer price index. This bill did not survive the governor's veto.¹

When considering whether to enact a minimum wage ordinance, a municipality must consider authority, preemption and constitutionality. First, the municipality must have the authority to enact the ordinance. Next, the ordinance must not be preempted by state law. Overall, the ordinance must be constitutional and not impair contract obligations, nor violate equal protection or other rights.

I. State-Granted Authority to Enact a Minimum Wage Ordinance

Maine's home rule power is authorized in the State Constitution and implemented by statute. Although this imparts a robust home rule regime, these two authorities grant

¹ An Act To Adjust Maine's Minimum Wage Annually Based on Cost-of-living Changes, 2013 Maine House Paper No. 430, Maine One Hundred Twenty-Sixth Legislature - First Regular Session.

somewhat different, and conflicting, levels of power: the scope of home rule under the Constitution is tempered by limiting language, whereas the statutory grant is plenary and limited only where “expressly denied.”² The Law Court has clarified that the operative standards are those under the statutes.³

In terms of models of home rule, Maine’s Constitution aligns with what is known as the imperio model, which balances state and municipal powers by delegating them according to interest.⁴ “The idea behind the imperio model is to render to the state what properly belongs to the state, and to render to local governments what properly belongs to local governments.”⁵ It is often difficult to discern what is primarily of state or local concern; this piece is defined in the courts.⁶ The imperio model grants municipalities more power than the traditional “Dillon’s Rule” model, which generally limits municipal authority to that which the state affirmatively grants; but it confers less power than the legislative model, which recognizes that municipalities have broad power to enact ordinances, as long as they are not expressly denied by any laws.⁷

Thus, a municipality in an imperio-type of a home rule state generally may enact an ordinance that is municipal in nature, as is iterated in Maine’s Constitution;⁸ however, the Law Court has recognized that the legislature “broadened the scope of municipal home rule authority set out in the Maine Constitution by permitting local legislation in areas beyond those ‘local and municipal in character.’”⁹

² See 30-A M.R.S. § 3001.

³ See *infra*, n.

⁴ Darin M. Dalmat, Bringing Economic Justice Closer to Home: The Legal Viability of Local Minimum Wage Laws Under Home Rule, 39 Colum. J.L. & Soc. Probs. 93, 104 and FN 30 (2005).

⁵ Dalmat at 104.

⁶ Dalmat at 105.

⁷ Dalmat at 102, 106.

⁸ Maine’s constitutional language states that municipalities “shall have the power to alter and amend their charters on all matters, not prohibited by Constitution or general law, which are local and municipal in character.” Me. Const. art. VIII, pt. 2, § 1.

⁹ Sch. Comm. of Town of York v. Town of York, 626 A.2d 935, 938, 939 (Me. 1993) (“Municipal legislation will be invalidated only where the Legislature has expressly prohibited local regulation, or where the Legislature has intended to exclusively occupy the field and the legislation would frustrate the purpose of a state law”), citing Central Maine Power Co. v. Town of Lebanon, 571 A.2d 1189, 1193 (Me.1990); see also City of Bangor v. Diva’s, Inc., 2003 ME 51, ¶¶ 13, 24 (upholding the enactment of an ordinance that prohibited nude entertainment without a certificate of occupancy, “[b]ased on the City’s home rule authority and the absence of an express prohibition or preemption by the Legislature).

Thus, in Maine, even though home rule authority is limited in the state constitution to those matters “local and municipal in character,” the Law Court has made it clear that municipalities in Maine no longer have to ask whether an enactment is “local and municipal in character”; they have the authority to enact ordinances that are not expressly denied.¹⁰

Here, the Legislature has not expressly denied the City’s ability to enact a local minimum wage law.¹¹

Also, because Portland may address those matters which are local and municipal in nature, it should be entitled to enact a local minimum wage law since municipal purposes of a minimum wage ordinance for Portland seem to directly bear on the general health, safety and welfare of the community.¹² “[M]inimum wage laws [can] address local needs and concerns. Indeed, the local costs of living often vary dramatically within a state... [t]hus, a statutory flat-rate minimum wage is unlikely to accommodate the needs of local residents throughout the state, because it is politically implausible that the statutory rate will reflect the cost of living in the most expensive parts of the state.”¹³

II. The Lack of Preemption by Maine State Law.

In addition to establishing the authority to enact a local ordinance, a municipality must also establish that an enactment is not preempted by state law. Under Maine law, whether a municipal ordinance is preempted involves determining whether (1) the legislature intended to occupy the field, and (2) the ordinance would frustrate the purpose of state law.¹⁴

A. The Legislature’s Intention to Occupy the Field

¹⁰ See, e.g., *New Mexicans for Free Enter. v. The City of Santa Fe*, 126 P.3d 1149, 1157-58 (N.M. App. 2005) (applying legislative model of home rule to uphold a municipal minimum wage ordinance, because this type of law is not expressly denied by the state law).

¹¹ See *M.R.S. 26, § 661, et seq.*

¹² The cost of living index for housing in Portland is exceptionally high (143 as compared to a national average baseline of 100). U.S. Census Bureau, *Statistical Abstract of the United States: 2012, Table 728. Cost of Living Index – Selected Urban Areas, Annual Average: 2010*, <http://www.census.gov/compendia/statab/2012/tables/12s0728.pdf> (visited October 10, 2014).

¹³ *Dalmat* at 112.

¹⁴ *Intl. Paper Co. v. Town of Jay*, 665 A.2d 998, 1002 (Me. 1995) (more stringent local emission standards upheld because they were expressly not preempted and advanced State environmental objectives), citing *Sch. Comm. of Town of York v. Town of York*, 626 A.2d 935, 939 (Me. 1993).

The legislature must intend to occupy the field exclusively. In Sch. Comm. of Town of York v. Town of York, the Court quoted the Legislative Committee Report that underlies Maine's statutory home rule authority:

"The mere fact that there is a state law, or even a multitude of state laws on a subject is by itself irrelevant; the key is whether the Legislature intended to exclusively occupy the field and thereby deny a municipality's home rule authority to act in the same area."¹⁵

Maine's minimum wage laws are quite thorough,¹⁶ and warrant a fairly extensive analysis of whether the legislature intended to occupy the field. This would include a look at the statute's legislative history as well as particular provisions of the ordinance itself, such as its applicability, definitions and the framing of other specific provisions. For example, the statute allows the state minimum wage to match the federal minimum wage if it becomes greater, but this increase cannot exceed \$1 per hour.¹⁷ The purpose of this provision could reveal the legislature's intent. That is, is the limit to curb state spending, or to protect certainty for employers?

In Maine, the minimum wage law sets a minimum hourly wage, prohibiting the payment of wages below \$7.50 per hour. The minimum wage law does not "permit" only its rate, establish any type of comprehensive wage scheme, express any need for uniformity or prohibit higher local minimum wage rates. A local minimum wage ordinance could therefore be viewed as complementary and not antagonistic towards the State law's policy of ensuring that all workers are paid at least \$7.50 per hour. In this way, a local ordinance would not be in conflict with the State law and would seem to most likely be permitted.

Despite the above analysis, those in opposition to a local minimum wage ordinance may argue that the State has "occupied the [wage] field" since the local

¹⁵ 626 A.2d 935, 938-939, 941 (Me. 1993) (quoting Report of the Joint Standing Committee on Local and County Government on the Revision of Title 30, at 8 (Dec.1986)).

¹⁶ For example, they include livable wage provisions, and rules for "Fair Minimum Wage Rates on State Construction Projects" and "Executive, Administrative, and Professional Exemptions from Minimum Wage and Overtime."

¹⁷ 26 M.R.S.A. § 664 ("If the highest federal minimum wage is increased in excess of the minimum wage in effect under this section, the minimum wage under this section is increased to the same amount, effective on the same date as the increase in the federal minimum wage, but in no case may the minimum wage exceed the minimum wage otherwise in effect under this section by more than \$1 per hour.")

ordinance frustrates the purpose of a unified state wage law. Maine law makes clear, however, that when local law requires a more stringent standard, both state and local law advance the same purpose, and thus, purpose of state law is not frustrated by enforcement of local law. See Central Maine Power Co. v. Town of Lebanon, 571 A.2d 1189, 1194-95 (Me. 1990).

Here, the State's stated purpose for its minimum wage law is to ensure that Maine's workers "receive wages sufficient to provide adequate maintenance and to protect their health, and to be fairly commensurate with the value of the services rendered." The City's proposed local minimum wage law, which would put in place a higher wage would advance the same purpose as the State law (i.e. to ensure that Maine workers are adequately compensated), and so the purpose of Maine's law would not be frustrated and the City's proposed ordinance.

B. Frustrating the Purpose of State Law

Maine's municipal ordinance statute additionally states that municipalities may exercise powers that are not denied "by clear implication."¹⁸ This standard of preemption is explained in the statute as thus: "The Legislature shall not be held to have implicitly denied any power granted to municipalities under this section unless the municipal ordinance in question would frustrate the purpose of any state law."¹⁹

The Law Court will "view municipal action as preempted only when the application of the municipal ordinance prevents the efficient accomplishment of a defined state purpose,"²⁰ but efficient accomplishment does not require that the easiest or least expensive option must be available. In Smith v. Town Of Pittston, the Court reversed a Superior Court decision and upheld a local ordinance because its prohibition on one option for septic waste disposal did not frustrate the purpose of Maine's Hazardous

¹⁸ 30-A M.R.S.A. § 3001.

¹⁹ 30-A M.R.S.A. § 3001(3).

²⁰ Smith v. Town Of Pittston, 820 A.2d 1200, 1206-1207 (Me. 2003) (internal quotations omitted), citing School Comm. of Town of York v. Town of York, 626 A.2d 935, 938 n. 8 (Me.1993) (quoting the legislative committee report regarding the home rule statute).

Waste, Septage and Solid Waste Management Act “to provide for safe and effective waste management.”²¹

The majority reasoned that (1) the municipality had met its requirement to provide for its septage disposal, (2) other methods of private septage disposal were available, even if they were not as easy and inexpensive as land spreading, and (3) the statute requires that municipalities share the authority to approve septage disposal sites (which must comply with local ordinances, zoning and land use laws.)²² Thus, even though the other methods may have been more difficult and expensive, the purpose of the statute “to provide for safe and effective waste management” was not frustrated.

Just as the majority recognized that additional restrictions in a local ordinance still allowed the state statute to function and fulfill its purposes on a broad scale, so too would a local minimum wage ordinance allow the purpose of the state minimum wage statute to continue to be effective. A local minimum wage ordinance would further the State’s public policy that “workers employed in any occupation should receive wages sufficient to provide adequate maintenance and to protect their health, and to be fairly commensurate with the value of the services rendered.”²³

III. The Constitutionality of Portland’s Minimum Wage Ordinance

Finally, local minimum and living wage ordinances have also been constitutionally challenged under the Contract, Equal Protection, Due Process, and Takings Clauses.²⁴ While the initial prong of the Contract Clause analysis may be implicated by a local minimum wage ordinance, it is likely to hold up under the remaining two prongs. The other constitutional challenges, thus far, have also not been

²¹ 820 A.2d 1200 (Me. 2003), 38 M.R.S.A. § 1302. Notably, while the policy statement in large part addresses “solid waste,” which does not include septage, it does discuss “waste management,” which is defined as the “purposeful, systematic and unified control of the handling and transportation” of waste, including septage. The decision does not appear to address the unified control element of the definition.

²² Smith at 1207-1209.

²³ 26 M.R.S.A. § 661.

²⁴ RUI One Corp. v. City of Berkeley, 371 F.3d 1137, 1141 (9th Cir. 2004) (expanded applicability of municipal living wage ordinance upheld under the Contract, Equal Protection and Due Process Clauses); New Mexicans for Free Enter. v. The City of Santa Fe, 126 P.3d 1149, 1166-68 (N.M. App. 2005) (municipal minimum wage ordinance upheld under Equal Protection and Takings Clauses).

strong enough to succeed, especially considering that local ordinances enjoy a presumption of reasonableness and constitutional validity.²⁵

A. The Contracts Clause

The Contracts Clause states, “No State shall... pass any... Law impairing the Obligation of Contracts,”²⁶ and the analysis involves three steps. First, the “threshold inquiry is ‘whether the [] law has, in fact, operated as a substantial impairment of a contractual relationship.’”²⁷ If it has, then a court determines whether there is a “significant and legitimate public purpose behind the regulation.”²⁸ Finally, government involvement in “[adjusting] the rights and responsibilities of contracting parties [must be based] upon reasonable conditions and [be] of a character appropriate to the public purpose justifying [the legislation's] adoption.”²⁹

1. The Threshold Inquiry – Substantial Impairment of a Contractual Relationship

When the Supreme Court analyzes a state law under the Contract Clause, the threshold inquiry is whether the law has “operated as a substantial impairment of a contractual relationship.”³⁰ This analysis has been applied by the Ninth Circuit in the context of a municipal living wage ordinance in RUI One Corp. v. City of Berkeley, 371 F.3d 1137, (9th Cir. 2004). The court in that case found that expansion of the ordinance’s applicability to certain employers located on public trust lands did not impair any contractual terms of a restaurant’s lease agreement with the City, including that which required the restaurant to use its best judgment and ability to maximize profits.³¹ The recognized components of this initial inquiry are “whether there is a contractual relationship, whether a change in law impairs that contractual relationship, and whether the impairment is substantial.”³²

²⁵ Goldblatt v. Town of Hempstead, N. Y., 369 U.S. 590, 595-96 (1962).

²⁶ United States Const. art. I, § 10, cl. 1.

²⁷ Energy Reserves Group, Inc. v. Kansas Power and Light Co., 459 U.S. 400, 411 (1983), quoting Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 244 (1978).

²⁸ Energy Reserves at 411.

²⁹ Id. at 412.

³⁰ Gen. Motors Corp. v. Romein, 503 U.S. 181, 186 (1992).

³¹ RUI at 1148-53.

³² RUI at 1147, quoting Romein at 186.

The existence of a contractual relationship turns on whether the parties have manifested assent to the specific issue addressed by the law.³³ Although the ordinance in RUI did not impair the lease contract with the City, no question was raised with regard to the employer's contracts with its employees. An employer may argue that where the terms of an employment agreement are based on a certain rate of pay, the parties have necessarily manifested assent to the specific issue addressed by a minimum wage ordinance, and a contractual relationship may be found. It may be further argued that a minimum wage ordinance impairs the contractual relationship because it affects a basic term of the contract on which the employer relied.³⁴

Even if there is a contractual relationship that has been impaired, the severity of the impairment is informed by existing regulations. "In determining the extent of the impairment, we are to consider whether the industry the complaining party has entered has been regulated in the past."³⁵ Minimum wage regulations have steadily broadened in legislative source and application along with changing societal circumstances across several decades.³⁶ Thus, it could be argued that an employer can reasonably expect continued regulatory changes, and any impairment should be considered to be insubstantial.

2. Legitimate Public Purpose

If a municipal minimum wage ordinance is found to be a substantial impairment of a contractual relationship, then it must serve a legitimate public purpose in order to be valid. "[T]he court must inquire whether 'the [legislative body], in justification, [has] a significant and legitimate public purpose behind the regulation, such as the remedying of

³³ Romein at 188 (finding no contractual relationship where, in negotiating employment contracts, the parties would not have been able to consider the future effects of fluctuating state law on benefits); RUI at 1148 (finding no contractual relationship regarding specific wage amounts where a restaurant's lease with the City required the use of best judgment in management to maximize profits).

³⁴ See Spannaus at 246.

³⁵ Energy Reserves at 411, 416 (finding no impairment of a contractual relationship where (1) contracts for natural gas stated that their terms were subject to "present and future state and federal law," and (2) the "regulation existed and was foreseeable as the type of law that would alter contract obligations").

³⁶ See United States Department of Labor, History of Changes to the Minimum Wage Law, <http://www.dol.gov/whd/minwage/coverage.htm> (accessed October 6, 2014); Changes in Basic Minimum Wages in Non-Farm Employment Under State Law: Selected Years 1968 to 2013, <http://www.dol.gov/whd/state/stateMinWageHis.htm> (accessed October 22, 2014).

a broad and general social or economic problem,’ to guarantee that ‘the State is exercising its police power, rather than providing a benefit to special interests.’”³⁷

The public purpose iterated by Maine’s legislature in implementing the state minimum wage is that “workers employed in any occupation should receive wages sufficient to provide adequate maintenance and to protect their health, and to be fairly commensurate with the value of the services rendered.”³⁸ Wages sufficient to provide adequate maintenance vary both temporally and by locality. Federal and State minimum wages have increased over time in an attempt to keep up with the cost of living across the nation and within states broadly.³⁹ As the cost of living in a particular locality differs from these broad averages over time, so do the “wages sufficient to provide adequate maintenance.”

The public purpose of a minimum wage for Portland would also include the consideration that wages are “sufficient to provide adequate maintenance” at the locality. A municipal minimum wage ordinance would help provide adequate maintenance for Portland residents by mitigating the overall relatively high cost of living in Maine’s largest city, which, unlike most other Maine localities, is exacerbated by an increasingly limited housing supply. Thus, a minimum wage ordinance in Portland would have a “significant and legitimate public purpose,” and the requirements of the second prong of the Contract Clause analysis are likely to be found to be met.

3. Reasonable Conditions and Appropriate Character

“Finally, the court must inquire whether the adjustment of the rights and responsibilities of contracting parties is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the legislation's adoption. [It] is customary in reviewing economic and social regulation [that] courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure.”⁴⁰

³⁷ RUI at 1147, quoting Energy Reserves at 411-12, 417 (upholding a state statute that may have impaired contracts somewhat by capping intrastate prices, but that also had a purpose “to protect consumers from the escalation of natural gas prices caused by deregulation”).

³⁸ 26 M.R.S. § 661 (2014).

³⁹ See *supra*, n. 13.

⁴⁰ RUI at 1147 (internal quotations omitted), quoting Energy Reserves at 412-13.

In addressing the public purpose to provide workers with wages sufficient for their adequate maintenance, a local minimum wage ordinance is a contractual adjustment of appropriate character because minimum wages generally have borne the test of time on both national and state scales as regulation of acceptable character. Increasingly, municipalities across the nation are also implementing minimum wages, and where challenged thus far, their legitimacy has been upheld.⁴¹ Furthermore, the presumption of validity applied to duly enacted local ordinances, under Maine's home rule, supports the appropriate character of a minimum wage ordinance to ensure local wage sufficiency.

Portland's municipal minimum wage ordinance will be based upon reasonable conditions because its parameters will reflect standards common to locally enacted legislation and include considerations of precedent, compatibility, and constitutionality. Thus, the requirements of the third prong of the Contract Clause analysis are likely to be found to be met, and no violation of the clause should be found to exist.

B. Due Process

Although historical economic due process analysis has been replaced by the modern Contract Clause analysis described above,⁴² other due process claims may be attempted.⁴³ The living wage ordinance in RUI included an opt-out provision for employers that were subject to bargaining agreements, and the plaintiffs claimed that this was an unconstitutional delegation of legislative authority to the unions.⁴⁴ This argument did not pass muster because the court recognized that the legislative body created the law in the first instance, and the opt-out provision was "simply a condition of the ordinance's application."⁴⁵

Though due process claims against municipal minimum wage ordinances may be attempted, the common law generally stacks up against them, and such claims should not be successful. "[That the] power under the Constitution to restrict freedom of contract...

⁴¹ Id. at 1151 (expansion of municipal minimum wage applicability did not "impair[] 'the very value bargained for' in the agreement" between restaurateur and the City); New Mexicans at 1173 ("The City has the power to set a minimum wage for private employers that is higher than that mandated by the state. The ordinance does not conflict with state law and is not otherwise unconstitutional.")

⁴² RUI at 1141-42, 1151.

⁴³ The Fourteenth Amendment states, "nor shall any State deprive any person of life, liberty, or property, without due process of law". United States Const. amend. XIV, § 1.

⁴⁴ RUI at 1156.

⁴⁵ Id. at 1157 (internal quotations omitted).

may be exercised in the public interest with respect to contracts between employer and employee is undeniable.”⁴⁶ “Liberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process.”⁴⁷

C. Equal Protection

Equal Protection challenges have been similarly unsuccessful. These have involved claims of unfair targeting as well as arbitrariness in implementation of local wage ordinances. As long as fundamental rights or suspect classes are not implicated, the rational basis level of scrutiny allows municipalities sufficient leeway to craft ordinances that effect their public purposes.

In RUI, the plaintiffs claimed that the minimum wage expansion unfairly targeted them because it affected only a limited number of employers that were located in a particular geographic area.⁴⁸ The Ninth Circuit recognized that the case did not involve a suspect class nor a fundamental right, that it addressed “social and economic policy,” and recognized that any rational basis for the legislation would support it.⁴⁹ The court then went on to quote precedent that accepted implementations of laws that were incremental or phased in approach, or targeted particular sectors or geographic regions, and held that the reasons stated in the City’s findings provided a rational basis.⁵⁰

In New Mexicans, the plaintiffs claimed that the exemption for businesses with less than 25 employees was arbitrarily selected and violated state equal protection. The court acknowledged that similarly situated individuals, such as small businesses with slightly more or less than 25 employees, would be treated differently and applied rational basis scrutiny. The Council’s desire to reduce the number of small businesses impacted while affecting the number of employees to a lesser degree was an acceptable basis as a “tradeoff” that constituted “classic line-drawing in legislative policymaking.”⁵¹

⁴⁶ W. Coast Hotel Co. v. Parrish, 300 U.S. 379, 392-93 (1937) (upholding Washington’s minimum wage statute and recognizing that the “essential limitation of liberty in general governs freedom of contract in particular”).

⁴⁷ W. Coast Hotel at 391.

⁴⁸ RUI at 1154.

⁴⁹ Id.

⁵⁰ Id. at 1155-56.

⁵¹ New Mexicans at 1167.

A municipal minimum wage ordinance for Portland is not likely to be found to violate the Equal Protection Clause, as long as the details of its implementation do not trigger a higher level of constitutional scrutiny (which they do not appear to do at this stage in the process).

D. Takings

Finally, in response to a plaintiff's claim that Santa Fe's minimum wage ordinance constituted a taking of private property under New Mexico's Constitution, the Court of Appeals surveyed federal case law and found direct conflict with the claim.⁵² The court went on to acknowledge that:

"Plaintiffs have not directed us to any authority, and we have found none, in which a minimum wage law has been viewed as a violation of either the federal or a state takings clause. We decline to be the first, particularly where we cannot identify any limiting principle that would prevent such a holding from potentially converting the vast majority of public health, safety, and welfare regulations, which typically burden businesses with some additional costs, into takings of private property by the state."⁵³

Generally, takings jurisprudence requires a much higher level of impact on personal property rights than would be implicated by Portland's proposed minimum wage ordinance, and therefore such arguments would most likely fail as well.

IV. Conclusion

Overall, a local minimum wage ordinance would seem to pass muster under all the legal tests described above. With that said, I am still concerned that this issue has not yet been litigated in Maine, and that future enforcement of the proposed ordinance may prove difficult.

⁵² New Mexicans at 1169 ("See Connolly v. Pension Benefit Guar. Corp., 475 U.S. 211, 222–23 [] (1986) (providing minimum wage laws as an example of regulations that do not constitute a taking); see also McGrew v. Indus. Comm'n, 96 Utah 203, 85 P.2d 608, 611 (Utah 1938) (holding that a minimum wage law is not a taking because an employer is neither required nor forbidden to employ anyone and no property right is being taken from the employer). In Commonwealth Edison Co. v. United States, 271 F.3d 1327, 1339 (Fed.Cir.2001) (in banc), the Court of Appeals for the Federal Circuit extracted from the plurality opinion in Eastern Enterprises v. Apfel, 524 U.S. 498 [] (1998), the conclusion that a majority of the United States Supreme Court has "rejected the theory that an obligation to pay money constitutes a taking." Commonwealth Edison Co., 271 F.3d at 1339.")

⁵³ New Mexicans at 1169.

**BUDGET REVIEW MEETING
COUNCIL CHAMBERS
May 14, 2015
IMMEDIATELY FOLLOWING THE INFORMATIONAL MEETING**

Wrap - Up